



State of California
Department of Justice
George Deukmejian
(PRONOUNCED DUKE-MAY-GIN)
Attorney General

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RECEIVED
DIVISION OF OIL AND GAS
DEC 6 11 23 AM '82

December 3, 1982

Richard E. Reavis, Chief
California Branch
Region IX
United States Environmental Protection Agency
215 Fremont Street
San Francisco, CA 94105

Re: California Application for Primacy,
Class II UIC Program

Dear Mr. Reavis:

The Headquarters Underground Injection Control (UIC) Primacy Review Team reviewed the responses made by the California Division of Oil and Gas (CDOG) to comments made by the Environmental Protection Agency (EPA) on CDOG's primacy application. Except for items 2 and 4, the CDOG's responses were found to be adequate. With respect to items 2 and 4, the Review Team indicated that the responses would be adequate if it could obtain from the California Attorney General's office, the legal representative of the CDOG, assurances on two matters. The first matter on which assurance is sought is that the CDOG can enforce the conditions set out in the letter of approval, which is the first step in the CDOG's two-step permitting process for underground injection. The second matter on which assurance is sought is that compliance by the operator with the letter of approval does not relieve the operator from compliance with all applicable statutes and regulations. We are able to give you the assurances you seek.

Under section 1724.6 of Title 14 of the California Administrative Code, prior approval of any underground injection or disposal project must be obtained from the CDOG before the project can begin. This prior approval is in the form of a letter setting forth the conditions upon which the approval to proceed is given. Failure of an operator to comply with any conditions set forth in the letter of approval would constitute proceeding with the project without the approval of the CDOG. This would be a violation by the operator of section 1724.6 of Title 14 of the California Administrative Code which would enable the CDOG to invoke the enforcement procedures available to it to

Richard E. Reavis, Chief
Page 2
December 3, 1982

compel compliance with the terms of the letter of approval.

The letter of approval may set forth special operational requirements that relate specifically to the project being approved. These requirements are in addition to, not in lieu of, the requirements of statutes and regulations applicable to underground injection and disposal projects. All operators must comply with applicable provisions of the statutes and regulations, and the CDOG has no authority to exempt an operator from such compliance. The statutes and regulations (see for example section 1724.10 of Title 14 of the California Administrative Code) provide general requirements for underground injection projects. However, unique characteristics of each project site may necessitate, in addition, site-specific requirements which is the function of the letter of approval to provide.

If this office can be of any further assistance in the process of obtaining EPA approval of the CDOG's primacy application, please do not hesitate to call.

Very truly yours,

Alan V. Hager
Deputy Attorney General

AVH:mjp
cc: M. G. Mefferd ✓



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

215 Fremont Street
San Francisco, Ca. 94105

*To SC
FYI
BoGR - L
Drene - F.O. 12-15-82*

UIC file

Dec 1 2 00 1982

Mr. M.G. Mefferd, State Supervisor
Division of Oil and Gas
1416 9th Street, Room 1310
Sacramento, CA 95814

30 NOV 1982

Dear Mr. Mefferd:

Review of the September 28, 1982 supplement to the Division of Oil and Gas' application for primacy over the Class II portion of the Underground Injection Control program has been completed. In general the responses were adequate but a concern remains. The concern which must be addressed by your legal representative in the Office of the State Attorney General is included in the results of the review (attached).

Informal discussions have taken place with Mr. Alan Hager, the Deputy Attorney General who represents the Division and the concern seems resolvable.

This appears to be the last hurdle prior to the approval of your program. If you have any questions please do not hesitate to call Ms. Ann Nutt in our Office of Regional Counsel at (415) 974-8045 or Mr. Nathan Lau of my staff at (415) 974-8274.

Sincerely,

Nathan W. Lau for

Richard E. Reavis, Chief
California Branch

Attachment

cc: Mr. Alan Hager
Deputy Attorney General



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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U.S. EPA
REGION IX
COMM. OFF.

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MEMORANDUM

SUBJECT: Headquarters Comments on California Final Underground Injection Control (UIC) Program -- Response to September 28, 1982 letter Lau to Mefferd

FROM: Phillip Tate
State Programs Division (WH-550)

TO: Bill Thurston
Region IX

The Headquarters Underground Injection Control (UIC) Primacy Review Team met on November 3, 1982, to review the responses of September 28, 1982, from Mr. Mefferd of the CDOG to Mr. Lau of Region IX. The Review Team consisted of Todd Gulick, Alan Morrissey, Don Olson, Phillip Tate, Jentai Yang, Francoise Brasier, and Roger Anzzolin.

Except for comment Nos. 2 and 4 where some concern remains the Review Team was satisfied by the State's response.

Comment 1: The State's response is adequate.

Comments 2 and 4:

The Review Team would like assurance from the Attorney General that:

- 1) The State can enforce the conditions set out in the letter of approval;
- 2) Compliance with the letter of approval does not relieve the operator from compliance with the regulations or the statute.

NOTE: The examples in attachment 3, September 28, 1982 submittal refer to action taken "to enforce provisions of the California Administrative Code" (letter to Mr. Frank Pell January 20, 1982) and the division of Oil and Gas Regulations (letter to Mr. P. F. Patterson, April 10, 1979.)

If the Attorney General can give us these assurances we can consider that the project plan approval letter constitutes a permit. The requirement to submit a "Notice of intent to drill" and subsequent action by the Director would then be similar to the Federal regulations provision of §122.41(c) and would not pose any problem.

Comment 3: The response is adequate.

Comments 5, 6, 7:

The State has demonstrated to the satisfaction of the review team that its enforcement mechanisms combined with an aggressive inspection program constitute an effective program to protect underground sources of drinking water.

Comment 8: The response is adequate.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

215 Fremont Street
San Francisco, Ca. 94105

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*Refer them
to Sec.
1714 of reg.*
19 OCT 1982

Mr. M.G. Mefferd
State Oil & Gas Supervisor
Division of Oil and Gas
1416 - 9th Street, Room 1310
Sacramento, CA 95814

Dear Mr. Mefferd:

An issue has surfaced regarding the Division of Oil and Gas' application for primary enforcement authority over the Class II portion of the Underground Injection Control program. Questions have been raised surrounding permits issued by default and some clarification is required from your legal representative in the office of the state attorney general. The specific questions which must be addressed are in the attachment.

This appears to be the last hurdle prior to the approval of your program. If you have any questions, please don't hesitate to call Nathan Lau of my staff at (415) 974-8274.

Sincerely yours,

Richard E. Reavis
Chief, California Branch

Attachment

cc: Alan Hager, Deputy Attorney General
Tom Speicher, Acting Regional Counsel, EPA, Region VIII

1. Ability to impose conditions on notices whose approval is mandated.

Section 3203 of the Public Resources Code (PRC) requires that if the Supervisor fails to provide a written response within 10 working days of filing of a written notice of intent to commence drilling or to alter a well, "such failure will be considered as an approval of the notice and the notice shall, for the purposes and intents of this chapter, be deemed a written report of the Supervisor." EPA is concerned that this section may require, if the Supervisor fails to provide a written response within 10 days, approval of a notice that fails to meet all standards and requirements that apply to a permitted facility under State law. Please address the question whether, when Section 3203 requires a notice to be approved, the Supervisor is required to ensure that the approval meets all requirements of State laws. In addition, please state whether the Supervisor has the authority when approving such a notice to include, in addition to "standard conditions", specific conditions that convert general regulatory performance standards into requirements specific to the facility and the site. Indicate whether the Supervisor may, or must, impose such requirements even though they would require design changes in the notice approved be default.

2. Ability effectively to prohibit a facility that cannot meet State requirements

Section 3203 appears to require that if the Supervisor fails to provide a written response within 10 days of submission of a notice, the notice is approved and cannot be denied. This may conflict with the Supervisor's authority to comply with all State UIC requirements when approving the notice. For some applications, the site at which the facility is proposed to be constructed may be so sensitive that under no conditions could the activity take place there and also comply with State law. Please address the question whether, if the supervisor failed to act on a notice for such a facility within 10 days, the supervisor could deny the permit, or impose permit conditions so strict that the activity would be effectively prohibited.